

# Contents

---



- 1. Introduction ..... 3
  - Advantages and risks ..... 4
- 2. Content and scope ..... 5
  - Applicability of this Primer to semi-presidential systems ..... 5
- 3. What is the issue? ..... 7
  - Principles of parliamentary democracy ..... 7
  - Origins and development of parliamentary constitutionalism ..... 11
  - General consideration for constitutional designers ..... 12
- 4. Basic design options ..... 15
  - Minimal parliamentarism ..... 15
  - Negative parliamentarism ..... 17
  - Positive parliamentarism ..... 19
  - Further design issues in relation to government formation rules ..... 23
  - Further rules for government removal ..... 27
- 5. Additional design considerations ..... 31
  - Prime-ministerial term limits ..... 31
  - Appointment of ministers ..... 32
  - Should ministers be members of parliament? ..... 32

Number of ministers .....	35
Communal representation in cabinet .....	36
Gender inclusion.....	37
Changes of government.....	37
6. Contextual considerations.....	40
Party system and electoral law .....	40
7. Decision-making questions .....	42
8. Examples .....	44
Negative parliamentarism.....	44
Positive parliamentarism .....	45
References .....	51
Annex.....	53
About the author.....	53
About International IDEA .....	53
About this series .....	54

# 1. Introduction

---



Governments in parliamentary democracies are not directly elected by the people. Their democratic legitimacy is dependent on the support of Parliament (in a bicameral system, usually on the basis of support in the lower, or popularly elected, house). Governments are chosen on the basis of parliamentary confidence and will ultimately cease to hold office if they lose parliamentary confidence.

A well-functioning parliamentary democracy requires a constructive, cooperative yet balanced relationship between the parliamentary majority and the government which leads, represents and is accountable to that majority. This enables the government to pursue coherent policies with the expectation of legislative support, while remaining responsible, through parliament, to the people. The government formation and removal rules are essential to this relationship. They determine the formal processes by which Parliament's confidence in the government is expressed or withdrawn.

All parliamentary democracies have such rules, but they are not always explicit in the text of the constitution. In some old parliamentary democracies, such as Canada, the Netherlands and New Zealand, the rules exist only as unwritten conventions, or are expressed in sub-constitutional documents such as a Cabinet Manual or in parliamentary standing orders. In more recent parliamentary constitutions, however, there has been a tendency to move towards a more explicit and formal expression of government formation and removal rules in the constitutional text. Such explicit formation and removal rules can be found in most of the constitutions adopted in the Commonwealth during the era of decolonization as well as in the parliamentary constitutions of Europe adopted after World War II or following the fall of the Berlin Wall.

## Advantages and risks

Since the government formation and removal rules concern who gains, holds and loses executive power, the stakes are high. There are obvious advantages, therefore, to having clear rules, which are seen to be fair and reasonable, and which avoid as far as possible procedural contests about who has the constitutional authority to govern. In the design of the government formation rules it is also important to consider how they contribute to both the stability and the accountability of the executive: if it is too easy to remove the government, there is a risk of instability; if it is too difficult to remove the government, then a lack of accountability may result.

## 2. Content and scope

---



This Primer discusses the constitutional mechanisms by which a government is chosen and removed in parliamentary democracies. It addresses the following subjects:

- key concepts of government formation and removal processes in parliamentary democracies, including an explanation of parliamentary ‘confidence’ and ‘responsibility’;
- a discussion of whether the mechanics of the government formation and removal process should be specified in the constitution and, if so, how;
- various forms of negative and positive government formation rules, including votes of investiture, the election of the prime minister by parliament and constructive votes of no confidence; and
- the appointment and removal of ministers (other than the prime minister).

### **Applicability of this Primer to semi-presidential systems**

Much of what follows also applies to premier-led semi-presidential systems, in which the president’s role is narrowly limited and in which executive leadership and policymaking are primarily in the hands of a prime minister and government chosen by, and responsible to, parliament (also known as ‘premier–presidential’ systems).

However, this Primer does not apply, or applies only with major caveats, to president-led semi-presidential systems, where the president is the real head of the executive and the prime minister has a subordinate position (also known as

‘president–parliamentary’ systems). While such systems may follow similar procedures to those set out in this Primer, they tend to behave very differently in reality, in so far as the prime minister is, in practice, not chosen by, and or responsible to, parliament, but is instead chosen by, and responsible mainly to, the president.

### 3. What is the issue?



#### Principles of parliamentary democracy

To design the government formation and removal procedures in the text of a constitution, it is first necessary to understand the underlying principles and mechanisms of parliamentary democracy.

In a parliamentary democracy, the offices of head of state and head of government are separated. The head of state (typically an elected president or hereditary monarch) serves primarily as a ceremonial and civic representative of the authority of the state, who might perhaps have an occasional role as a constitutional guardian or arbiter. Meanwhile, policy leadership is provided by the head of government (typically a prime minister: see Box 3.1), who is, in effect, the chief executive and who leads the **cabinet** or **council of ministers**.

#### Box 3.1. The prime minister: a note on terminology

The term ‘prime minister’ is the usual English-language designation for the head of government in a parliamentary system, although other terms—such as first minister, chief minister, chancellor, head of government, president of the council (of ministers), minister of state, premier or minister-president—are sometimes applied in various linguistic and cultural contexts.

The prime minister is not directly elected by the citizens, but is normally—at least formally—nominated or appointed by the head of state. However, the head of state may not have very much discretion in designating a prime minister, since

the first principle of parliamentary democracy is that the government must be chosen on the basis of **parliamentary confidence**.

Confidence, used in this context, simply means support. A government is said to enjoy the confidence of parliament when a majority of the members of parliament politically support the government and give consent to its appointment and continuance in office. In bicameral systems, the confidence of the lower house is usually sufficient. A formal expression of this support and consent is known as a **vote of confidence**.

The process of choosing a prime minister, and of selecting the other ministers who make up the government, is known as the **government formation process**. This typically occurs after the death, resignation or removal of the former prime minister, or following a general parliamentary election. The purpose of the government formation process is to choose and appoint a prime minister and a cabinet who enjoy the confidence of parliament and can govern effectively.

The formal mechanism for choosing a prime minister varies. In some cases, the head of state may simply be expected, either by convention (e.g. Canada, Norway) or by explicit constitutional rules (e.g. Bangladesh) to appoint a prime minister who is likely to enjoy the confidence of parliament, leaving it up to the discretion of the head of state to identify and appoint such a person on the basis of parliamentary election results. Alternatively, the head of state may nominate a candidate for prime minister who is required to win the support of parliament in an **investiture vote**, held either before the appointment is made (e.g. Spain) or within a specified time immediately thereafter (e.g. Italy, Croatia). There are also examples of countries in which parliament may nominate its own preferred prime minister by resolution (e.g. Ireland), or where the prime minister is elected by parliament in a **contested election** (e.g. Solomon Islands); in these latter cases, the role of the head of state is limited to formally appointing the person who has been chosen by parliament.

The ministers other than the prime minister are typically chosen by the prime minister. They are either directly appointed by the prime minister (e.g. Japan) or formally appointed by the head of state upon the nomination of the prime minister (e.g. India). In some cases, ministerial appointments may also require the approval of parliament, either because there is a specific vote to appoint ministers (e.g. Ireland) or because the government as a whole, and not just the prime minister, has to win the support of parliament in a vote of investiture (e.g. Italy). A prime minister who enjoys the confidence of parliament will usually be able to secure parliamentary approval for the appointment of a ministerial team, although the extent to which the prime minister has a free hand in these appointments often depends on whether they lead a single party government or are dependent upon the support and agreement of coalition partners.





Government formation is an intensely political as well as a legal process, and its nature and outcome can depend as much on political circumstances as on the written (or even unwritten) constitutional rules. Whether or not a formal election or vote of investiture is required, it is expected that the prime minister will usually be the leader, or the designee, of the majority party or coalition in parliament.

- If one party has the support of an overall majority in parliament, the leader of that party will normally have a rightful claim to be nominated as prime minister, leading to what is known as a **majority government**. In such cases, the government formation process may be a mere formality that takes only a day or two.
- If no party has won an overall majority in parliament, government formation may involve complex and protracted negotiations between political parties in an attempt to form a **coalition government** that enjoys the confidence of parliament. These negotiations may concern the party composition, personnel and policy direction of the government, and may take weeks or even months. The outcome of these negotiations may lead to the signing of a formal **coalition agreement**, setting out the policy agenda on which the coalition is united.
- Alternatively, a **minority government** (a government tolerated by the majority of members of parliament, but actively supported only by a minority) may be formed. This may have the formal backing of one or more other parties, who agree in return for negotiated policy concessions to support the government on votes of confidence and on approval of the budget—a so-called confidence and supply agreement—without entering into a full coalition.
- In some cases, a situation will arise where a government cannot be formed (leading to the dissolution of parliament and new elections).

Once appointed, the government is responsible to parliament. In this technical sense, **responsibility** is more than just general parliamentary accountability, which is exercised on a regular basis through parliamentary committees, public enquiries, questions for ministers, plenary debates and so forth. It refers instead to the ability of parliament to remove a government by withdrawing confidence. This may be achieved by passing a **vote of no confidence** (or, in some jurisdictions, a vote of censure: see Box 3.2) or by rejecting a requested vote of confidence. For this reason, parliamentary democracy is sometimes known (especially in countries historically influenced by British traditions) as a system of **responsible government**. Withdrawal of parliamentary confidence will usually result in either: (a) the resignation or dismissal of the government; or (b) a dissolution of parliament leading to a new election. Which of these outcomes is

more likely will depend on the political situation and the constitutional rules in effect.

### Box 3.2. Votes of no confidence and votes of censure

In some national constitutional traditions, a distinction is made between a ‘vote of censure’, which implies a parliamentary condemnation for wrongdoing almost akin to an impeachment, and a ‘vote of no confidence’, which simply reflects a change in parliament’s political choice and need not be associated with any specific wrongdoing by the government. In practice, however, these differences can be very slight. In many contexts the terms are often nearly synonymous and are sometimes used interchangeably.

The essence of parliamentary democracy is a close relationship of mutual trust and harmonious cooperation, united by party loyalty, between the executive and legislative branches. The government in a parliamentary democracy is usually supported by the political party, or the coalition of political parties, forming the parliamentary majority. The prime minister and ministers are usually leading members of that majority, and the majority is usually content to allow the government to exercise broad discretion in determining the policy agenda and proposing legislation. So, without ignoring the limited but real influence that parliaments may have in shaping policy and amending legislation, the government in a parliamentary system normally expects parliament to support its legislative programme (minority governments, where the support of other parties might have to be won on an issue-by-issue basis, are an exception).

However, the government can exercise this policy leadership role only so long as it retains the confidence of parliament. The approval by parliament of a formal vote of no confidence—usually on a motion proposed by the opposition—is a sign of a breakdown in this mutual trust, which will lead to the severing of this relationship. Depending on the rules and practices of the country, and on the political situation, this usually means either that the government must resign or that parliament must be dissolved and new elections held. ‘Refusal of supply’ (the failure of parliament to pass the budget on which the government depends for the supply of funds), or in some cases even the rejection of a piece of high-profile legislation that the government has declared to be a matter of confidence, may also be treated as a vote of no confidence and can also lead to the resignation of the government or to a dissolution of parliament. This system of concentrated but responsible power allows effective and coherent policymaking under the unified leadership of the prime minister to be coupled with clear lines of democratic accountability, through parliament, to the people.



## Origins and development of parliamentary constitutionalism

The first generation of parliamentary constitutions, adopted in the 19th century, allowed hereditary monarchs to retain formal executive power, including the right to appoint and dismiss ministers. In practice, as these countries democratized, a set of unwritten rules, known as **constitutional conventions** (see Box 3.3), developed alongside the formal constitutional rules. These conventions required executive powers to be exercised by a prime minister and cabinet who, although formally appointed and dismissed by the monarch, were in practice selected and retained on the basis of parliamentary confidence. This development happened organically in response to the extension of suffrage and the rise of organized political parties, without formal constitutional amendment.

### Box 3.3. Constitutional conventions

The term ‘constitutional convention’ (lower case) refers to an unwritten but generally accepted constitutional rule of conduct which is politically (but not legally) binding. Note that it is not to be confused with the term ‘Constitutional Convention’ (usually capitalized), which is sometimes used to designate a constitution-making body distinct from the ordinary legislature, such as the Convention which drafted the US Constitution in 1787.

By the early 20th century, there was a substantial gap in several parliamentary democracies between the legal wording of the constitution and the established practice of government according to constitutional conventions (with the latter often being more democratic than a formal, literal reading of their constitutional texts would suggest). This discrepancy between legal and conventional constitutionalism is still maintained in some long-established parliamentary democracies, whose written constitutions say very little about the process of government formation and removal. For this reason, older parliamentary constitutions (such as those of Australia, Canada, the Netherlands and Norway) can be misleading. They must be read in their own historical context, with an awareness of how conventional usage interacts with the formal text, and should be used as a model or example for constitution-builders elsewhere only with great caution.

With the expansion of parliamentary democracy into newly independent states in the years after World War I (1914–18), new constitutions sought to recognize the principles of parliamentary government with regard to government formation and removal in clear, coherent, legally binding constitutional terms. The

inclusion of explicit government formation and removal rules in the text of these 20th-century constitutions was an important step forward in constitutional design. It placed parliamentarism on a legal-constitutional rather than merely conventional foundation. The advantages were both practical (in terms of increasing the clarity and certainty of the rules) and symbolic (in terms of proclaiming the democratic principle that the government should be chosen, through parliament, by the people and should be responsible, through parliament, to the people). This development was especially valuable as parliamentary democracy was adopted in countries where the existence of unwritten conventions could not be assumed, or where their content, applicability or authority was likely to be disputed. Therefore, most modern parliamentary constitutions include the rules and processes of government formation and removal, at least to some extent, in explicit terms in the constitutional text.

## General consideration for constitutional designers

Some ways in which these rules can be formulated are discussed in the following sections. First, however, it is necessary to make a few general comments that will help to explain and contextualize those rules.

### Purposes of the rules

The purposes of government formation and removal rules in a parliamentary constitution are: (a) to encourage and facilitate the prompt appointment of a government enjoying the support of parliament wherever this is possible or, where this cannot be achieved, to allow for the formation of a minority government with as much stability as possible; (b) to allow for the removal of a government if it ceases to enjoy the support of parliament. In other words, the rules should enable parliament to confer its confidence on the government and to enforce the responsibility of the government by withdrawing its confidence.

### Need for clarity and certainty

There should never be any doubt about who has the confidence of parliament or about who is legitimately in government. The rules must therefore be unambiguous and must be written to cover all possibilities. This is necessary to avoid dangerous loopholes in the rules that could be exploited by unscrupulous political leaders and to also prevent situations of constitutional crisis in which the rules are unclear, cannot be applied or cease to be relevant.

### Executive–legislative balance of power

If it is relatively easy for parliament to remove a government, this will put parliament as a whole in a position of power in relation to the government; there

is an increase in democratic responsibility, but perhaps at the cost of stable and effective government. If, on the other hand, it is difficult for parliament to remove a government, this will put the government in a more dominant position in relation to parliament; an increase in stability and effectiveness is likely, but at the cost of weaker democratic responsibility. In practice, much depends on the number of parties (whether the country has, for example, a dominant party, a competitive two-party system or a fragmented multiparty system). This, in turn, may depend on the electoral system. Constitutional designers crafting the rules on government formation and removal have to understand how they are likely to work in the current political situation, and also how they would work if the situation were to change in the future.

### Role of the head of state

Influence over the choice of prime minister is one of the most important potential sources of power for a head of state. If the head of state can freely select and dismiss the prime minister, then policymaking authority is likely to shift into the head of state's hands, thus making the system of government as a whole less genuinely parliamentary. So, if a parliamentary system in which the head of state plays only a ceremonial and non-political role is desired, it is very important to insulate the head of state from this choice—for example, by having parliament elect the prime minister, or by constitutionally restricting the degree of personal discretion allowed to the head of state in nominating a prime ministerial candidate.

Yet even where the head of state's actual influence on the choice of prime minister is minimal, it is usual for the head of state to retain at least a vestigial, formal and symbolic role in the appointment process (by formally nominating a candidate for parliament's approval or by formally appointing the candidate nominated by parliament). This act formally confers legitimacy and authority on the prime minister.

It should be noted that a small number of democracies (e.g. South Africa, Botswana and Nauru) have hybrid constitutions that are parliamentary in the sense that the government is dependent on parliamentary confidence, but that deviate from parliamentary norms because they are led by a president who is both head of government and head of state. In general, such systems require the formal election of the president by parliament (although it would also be possible for the speaker to play the part of a quasi-head of state in formally appointing the president and in receiving the president's resignation). If such an arrangement is contemplated, careful thought needs to be given to the symbolic and constitutional consequences of losing the traditional parliamentary distinction between head of government and head of state.

## Dissolution

If removing a government by means of a vote of no confidence risks triggering a dissolution of parliament, then members of parliament will be less likely to push for a vote of no confidence—since to do so may risk their own seats. On the other hand, if the government cannot simply dissolve parliament at will, then parliament will be in a much stronger position, potentially, to remove and replace governments between general elections without risking a premature dissolution. In any case, there must be harmony and internal consistency in the interaction of the government formation and removal rules and the dissolution rules, so that they work together to sustain a constructive, balanced, working relationship between parliament and the government. For more details on dissolution rules, see International IDEA Constitution-Building Primer No. 16, *Dissolution of Parliament*.

## 4. Basic design options

---



Constitutions can regulate the process of government formation in various ways. In this Primer a basic distinction is made between ‘minimal’, ‘negative’ and ‘positive’ versions of parliamentarism. Constitutions adopting a minimal approach simply refer to the general principles of parliamentarism, without specifying in the constitution an exact set of processes by which governments are to be formed. Negative parliamentarism means that the responsibility of the government to parliament and the ability of the parliament to dismiss the government by means of a vote of no confidence are formally recognized in the constitution, but there is no requirement for a formal parliamentary vote to select or approve a prime minister: parliament, for the most part, gives tacit consent to the government. Positive parliamentarism, in contrast, requires the formal approval of parliament to be actively expressed—by means of a contested election or vote of investiture, for example—before a prime minister can be appointed.

### Minimal parliamentarism

#### Statement only of parliamentary principle

Some constitutions recognize the principles of parliamentary democracy—that is, the need for the government to enjoy the confidence of parliament—only in a general way, without specifying clear government formation and removal rules.

- The Constitution of Iceland establishes that ‘Iceland is a Republic with a parliamentary government’ but other than proclaiming this principle does

not provide any specific instructions to the president in the formation and removal of governments (article 1).

- The Constitution of Luxembourg proclaims that ‘Luxembourg is placed under a regime of parliamentary democracy’ but does not specify the rules and procedures of parliamentary democracy (article 51).

Because the rules for government formation and removal are not clearly stated in the constitution, this approach places great reliance on unwritten conventions, which, to be effective, have to be widely shared, understood, accepted and enforced by the political actors. It presupposes and requires, therefore, a stable and mature political culture in which the principles of parliamentary democracy are well established.

### Sub-constitutional rules

Some countries that rely on such minimal constitutional provisions use sub-constitutional or para-constitutional texts (for example, parliament’s standing orders or a cabinet manual) to specify the rules of government formation and removal in an explicit, authoritative way without putting these rules into the text of the constitution itself.

- In New Zealand, the processes of government formation and removal are stated in the Cabinet Manual, an official document that provides an authoritative point of reference for understanding the conventional rules (Palmer and Palmer 2004).
- In the Netherlands, the process of government formation was (until 2011) determined by unwritten conventions, according to which the monarch would select an ‘informateur’ to investigate the possibilities for a viable coalition and then nominate a ‘formateur’ with a mandate to form a government. Since then, in response to the criticism that this reliance on the monarch’s personal discretion was undemocratic, the formation process has been regulated by parliamentary standing orders, which provide for the nomination of the ‘formateur’ or ‘informateur’ by the Lower House (Andeweg and Irving 2014).

Specifying the rules in these sub-constitutional or para-constitutional texts can be helpful in that it makes the rules clearer and more easily understood than would be the case if they existed only as unwritten conventions, although the exclusion of these rules from the legal text of the constitution still makes them vulnerable to change and difficult to enforce. Therefore, while these approaches may be acceptable, as a minimal position, for long-established parliamentary



democracies that wish to make their conventional rules more explicit without having to go through the process of a formal constitutional amendment, they are not well suited to new or fragile parliamentary democracies.

## Negative parliamentarism

### Removal rule only specified in the constitution

In some (usually older) constitutions, the principle that the government must resign if it loses the confidence of parliament is explicitly stated in the constitution, but the necessary counterpart to that rule—namely, that the government should be appointed on the basis of its expected ability to win and sustain the confidence of parliament—is unstated.

- The Constitution of Norway states that a minister must resign if Parliament passes a vote of no confidence against that minister or against the cabinet as a whole, and that the king is bound to accept such resignation (article 15).
- The Constitution of India states that ‘The Council of Ministers shall be collectively responsible to the House of the People’, a phrase that clearly indicates that the government must have and maintain the confidence of the House of the People—or otherwise resign or ask for a dissolution. However, the Constitution does not regulate the process of forming a government, nor does it require that the government be approved in advance by a parliamentary vote (article 75).

However, the ability to refuse and reject is, indirectly, the ability to choose, and the need to win and maintain parliamentary confidence will politically constrain the range of possible prime ministerial candidates from whom the head of state must make an appointment, so that, in effect, the prime minister must be at least acceptable to the parliamentary majority.

### Mandate to appoint on the basis of confidence

In many countries, the government formation rule takes the form of a constitutional mandate requiring the head of state to appoint as prime minister the person who enjoys the confidence of parliament. This is usually accompanied by a government removal rule that requires the government to resign if it loses a vote of no confidence.

- The Constitution of Bangladesh states: ‘The President shall appoint as Prime Minister the member of Parliament who appears to him to

command the support of the majority of the members of Parliament’ (article 56).

- The Constitution of the Bahamas says that, ‘Whenever there shall be occasion for the appointment of a Prime Minister, the Governor-General shall appoint as Prime Minister: (a) the member of the House of Assembly who is the leader of the party which commands the support of the majority of the members of that House, or (b) if it appears to him that party does not have an undisputed leader in that House or that no party commands the support of such a majority, the member of the House of Assembly who, in his judgment, is most likely to command the support of the majority of members of that House, and who is willing to accept the office of Prime Minister’ (article 73).

This arrangement recognizes the principle that the prime minister must be appointed on the basis of parliamentary confidence, which symbolically emphasizes the democratic role of parliament in the government formation process, although a formal election or investiture vote is not required. These rules might still allow the head of state to exercise some personal discretion in appointing a prime minister, especially in a multiparty system where no one party has an overall majority in parliament—although directive formation rules such as in Greece and Bulgaria (see below for more details) may counteract this.

### Think Point 1

Is there a successful history of parliamentary democracy in the country under consideration? Is there already a good understanding of how parliamentary democracy should work? Are workable ‘rules’ of government formation and removal well embedded in unwritten conventions? Are these conventions sufficiently clear and comprehensive that differences over interpretation and application are unlikely to occur? Can political leaders—including the head of state—be trusted to uphold these conventions, and to apply them conscientiously, fairly and in good faith? Are the conventions able to respond to different political circumstances (for example, the rise of new parties) without being broken or leading to unintended outcomes?

If the answer to all these questions is Yes, it might be practical to adopt minimal or negative formation rules. If the answer to any of these questions is No, then positive formation rules—requiring the express approval of parliament for the formation of a government—may be necessary for parliamentarism to take root.



## Positive parliamentarism

Positive parliamentarism constitutionally requires some form of explicit vote of investiture by which the government is formally endorsed by parliament. This can take various forms: approval voting in an uncontested election, a contested election, the nomination of a prime minister by parliamentary resolution, or a requirement for the appointment of a prime minister to be confirmed by a vote of confidence. In practice, these are simply different mechanisms for ensuring that the government has a clear parliamentary mandate, and the differences between these mechanisms may be slight.

More subtle differences—such as who can nominate candidates, the majority required for approval, the time limit for the completion of the process and the means of breaking deadlocks—can have a more profound effect on the outcome of the government formation process. In particular, there is a real difference between those mechanisms that (in the details of the nomination or deadlock-breaking rules) allow the head of state to have an active role in government formation and those that do not.

### Approval by parliament/vote of investiture

Approval by parliament is a common way of selecting a prime minister in contemporary parliamentary democracies. It may take the form of an uncontested election in which members vote for or against a single nominated candidate for the office of prime minister. Responsibility for nominating a candidate usually rests with the head of state, although in some countries (such as Sweden) the speaker of parliament performs this function, while in others (such as Finland) the head of state may make the nomination only ‘after having heard the Speaker of the Parliament and the parliamentary groups’. If approved by parliament, the head of state formally appoints that candidate as prime minister. If the nominated candidate is rejected by parliament, it is usual to allow for the nomination of another candidate, although in some cases, rejection of the nominee will lead to a contested election, nomination by parliament or some other method of selecting a prime minister.

- The Constitution of Finland is typical of such provisions: ‘The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament. If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election

of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected' (section 61).

Some constitutions allow the head of state to appoint a government without the prior approval of parliament, but then require the newly appointed government to be subjected to a parliamentary vote of confidence within a specified time. This **vote of investiture** confirms and completes the appointment of the government. Until this procedure has been carried out, the government's appointment may be regarded as provisional. If a vote of investiture is refused or not granted within a specified time, the government must resign, and the government formation process must begin again with a new appointment. This can be regarded as a variation on the approval voting approach discussed above—the only differences are that a vote of confidence happens after the formal appointment of the prime minister, not before, and that confidence in the government as a whole, and not only the prime minister, is at stake.

- In Lebanon, the president nominates the prime minister, but '[t]he Government must present its ministerial program to the Chamber of Deputies for a vote of confidence within thirty days from the date of promulgating the decree of its formation' (article 64).
- In the Czech Republic, 'the President of the Republic shall appoint the Prime Minister and, on the basis of her proposal, the other members of the government', but 'within thirty days of its appointment, the government shall go before the Assembly of Deputies and ask it for a vote of confidence'. If the newly appointed government does not receive a vote of confidence from the Assembly of Deputies (lower house of parliament), the process of nominating a government is repeated. If on this second attempt the government does not receive a vote of confidence from the Assembly of Deputies, the president must then appoint a prime minister on the nomination of the chairperson of the Assembly of Deputies (article 68).

### Directive formation rules

Whenever the head of state is called upon to nominate a prime ministerial candidate for the approval of parliament, there is a possibility—especially in a multiparty system in which no one party has an overall majority—that the head of state may have to exercise some discretionary personal influence over the selection of a nominee. This could compromise the position of the head of state as a non-political, independent, unifying ceremonial figurehead. To remove this delicate and potentially dangerous discretion, some constitutions (e.g. Greece, article 37; Bulgaria, article 99) prescribe a certain order in which the various

potential prime ministerial candidates have an opportunity to form a government that enjoys the confidence of parliament, beginning with the leader of the largest party, followed by the leader of the second-largest party. Such rules not only insulate the head of state from political controversy, but also create a direct connection between the results of the parliamentary election and the government formation process, because the party that ‘wins’ the election, in terms of gaining a plurality of seats, has a constitutionally mandated priority in the formation of a government.

### Election of the prime minister by parliament

Some constitutions require that the prime minister be elected by parliament in a (potentially contested) election (e.g. Solomon Islands, section 33; Tuvalu, section 63; Vanuatu, section 41) in which members can vote between two or more candidates. This approach is also used in several subnational governments (e.g. some Canadian territories and German Länder). This approach has three main advantages.

1. It removes the head of state from the process of government formation, except perhaps in a purely ceremonial capacity (formally appointing the nominee elected by parliament). This, like the directive government formation rules discussed above, is a safety measure against the excessive power of the head of state (whether that be a monarch who must be insulated from the process to ensure their political impartiality or a directly elected head of state who might be tempted to use their democratic mandate to interfere in government formation).
2. Election rules can be formulated in such a way that they will always lead to a completed election, preventing deadlocks. There may be successive rounds of voting, with diminishing majorities needed for each additional round, while the field of eligible candidates may be reduced in each round (by removing the lowest-polling candidate or by allowing only the two leading candidates to proceed to a run-off election). For examples of such rules, consult schedule 2 of the constitutions of the Solomon Islands, Tuvalu and Vanuatu. Because of this, some countries use election by parliament as a deadlock-breaking mechanism when a government cannot be formed in other ways (see ‘Mixed Approaches’ below).
3. It is suited to countries with weak party systems, as it provides an efficient way of selecting a prime minister even in a parliament in which there are no clear party groups and in which loose alliances of independent members predominate. Of course, the election of the prime minister by parliament can also be used in situations where there are well-developed party structures—although in these cases it will usually be clear in advance

(from the balance of parties in parliament and from the coalition negotiations between them) which candidates have a realistic chance of being elected as prime minister. The election of a prime minister may therefore have a largely formal character, the purpose of which is to legitimate and to confirm, rather than actually choose, a prime minister—although genuinely competitive elections do sometimes occur.

### Nomination by parliament

In some countries (e.g. Ireland), the constitution refers to the nomination of a prime minister by parliament, rather than an election, although, in practice, there is very little difference between this and an election. Ireland's Constitution (article 13) states: 'The President shall, on the nomination of [the lower house of parliament], appoint the [prime minister]'. Neither the Constitution nor the standing orders of parliament provide detailed rules for the conduct of the nominating process. By convention, members of parliament may submit nominations to the speaker, and there is an opportunity to make short speeches in support of candidates. Each nominee is then voted on in turn, and a nominee is approved if he or she receives more votes in favour than against (Ajenjo, Martin and Rasch 2011).

### Mixed approaches

Some constitutions prescribe complex government formation rules in which different ways of gaining parliament's approval for the government are used at different stages of the process. For example, the nomination of candidates may move back and forth between the head of state and the members of parliament.

- In Germany, the president nominates a candidate for chancellor (prime minister), who is voted upon by the Bundestag (lower house of parliament). If approved by an absolute majority vote, that candidate is appointed as chancellor by the president. If the president's nominee is not approved by an absolute majority, the Bundestag has 14 days during which to elect a candidate by an absolute majority. If after 14 days a chancellor has not been elected by an absolute majority, a final round of voting must be held. If in that final round a candidate is elected by an absolute majority, the president must appoint that candidate as chancellor. If a candidate is elected by a simple majority, the president has a choice between either accepting a minority government or dissolving the Bundestag (article 63).
- The constitutions of Fiji and the Cayman Islands combine the directive appointment of a prime minister by the head of state with election by parliament: thus, if there is one party with an absolute majority in

parliament, the head of state is required to appoint the leader of that party as prime minister, and no vote of investiture is needed; if no party has an absolute majority, parliament must elect a prime minister who is then formally appointed by the head of state (Fiji: article 93; Cayman Islands: article 49)

## Further design issues in relation to government formation rules

### Parliamentary democracy in bicameral systems

In bicameral parliamentary systems, it is usual for the lower house to have sole competence over the choice (and removal) of the prime minister, with the upper house typically being removed from the process. This reflects the fact that the lower house is, in almost all circumstances, directly elected on the basis of population, and thereby the house that has the clearest democratic mandate. Upper houses, in contrast, are often appointed, indirectly elected by local, provincial or state-level assemblies, or chosen by other means that have less democratic legitimacy—for example, on a territorial basis rather than on the basis of population.

However, in countries where parliamentarism is based only on convention, and in which the political relationships between the head of state, prime minister, cabinet and parliament are not clearly and explicitly set forth in the constitution, there might be some confusion or disagreement regarding the extent of the upper house's power. In Australia in 1975, the government of Gough Whitlam was dismissed by Governor-General Sir John Kerr after being unable to secure the approval of the Senate for its budget. Kerr argued that a government that could not secure supply of funds could not govern, and thereby in effect asserted the principle that the Senate had the capacity to force the dismissal of the government.

To avoid such confusion, some constitutions state that the government is only responsible to (in the sense of requiring the confidence of) the lower house—although without eliminating the often important ancillary role that upper houses have in scrutinizing the government and ensuring accountability short of actually removing the government. The Constitution of India, for example, specifies that the government is responsible to the Lok Sabha (lower house)—implicitly recognizing that it is not responsible to the Rajya Sabha (upper house). In India, the responsibility of the government solely to the lower house is reinforced by two other constitutional rules: first, a deadlock-breaking mechanism enabling legislative disputes between the two houses to be resolved by means of a joint session; second, a provision that narrowly restricts the powers of the upper house with regard to money bills (bills concerning taxes, expenditures and the like) and

gives the lower house an unequivocal final say over such bills. The effect of these provisions in the Indian Constitution is to ensure that the upper house cannot cause a governmental crisis by withholding funds—as had happened in Australia in the example cited above—and thereby to reconcile bicameralism with parliamentary democracy in a federal system.

In a few countries, on the other hand, the government is expressly declared to be responsible to both houses. The Italian Constitution of 1946 is one example of this, and several Italian governments have been removed from office as a result of adverse votes in the Senate. However, responsibility to both may be regarded as a suboptimal arrangement, since it may make it harder to establish and easier to remove a government, thereby reducing executive stability.

### Think Point 2

If there is a second chamber, what—if any—should be its role and powers in relation to the processes of government formation and removal, and how do these relate to its overall position in the political system? For example, if the second chamber equally represents constituent states in a federation, is it appropriate for the federal government to be responsible to that chamber even if the majority in that chamber might be very different (because small states are over-represented and large states under-represented) from the majority in the country in general? Would that be democratically acceptable?

If the second chamber is appointed or indirectly elected, should it have any role at all in the appointment and dismissal of a government, or should be it limited to other check, balance and review functions? Is the text of the constitution clear about the role of the second chamber (if any) in government formation and removal? Is there any room for doubt, confusion or divergent readings that could cause a future constitutional crisis?

### Majority requirements

Different sizes of majority may be required for a government to take office, such as an absolute majority (50 per cent plus one of all available votes), a majority of those present and voting (50 per cent plus one of all votes cast) or a simple majority (more votes in favour than against, or a simple plurality of votes for any one candidate in a contested election).

As a general rule, requiring an absolute majority of the members of parliament to support the formation of a government might make it more difficult to complete the government formation process. In a complex multiparty system it might require the negotiation of a formal coalition. If a government can be



appointed by a simple majority, on the other hand, this might encourage the formation of minority governments which have to make ad hoc deals with other parties in order to enact their legislative agenda.

Diminishing majority rules may be used as a means of encouraging a decision. In Spain, for example, the approval of a prime ministerial candidate requires, in the first instance, an absolute majority vote in the Congress. If a nominee is not approved by an absolute majority, a second vote is held after 48 hours by a simple majority.

### Open or secret ballot

Although some countries allow the election of a prime minister by secret ballot, it is usual for prime ministerial investiture votes to be by open voting (e.g. by roll call or recorded voting). This is because such votes are inevitably backed by a party whip—meaning that members of parliament are expected, in these very important and sensitive votes, to vote as directed by their party leaders or as agreed in their party caucuses. This party discipline helps the functioning of parliamentary government in two ways. First, it means that governments can be formed on the basis of an agreement between parties as cohesive blocs, without having to negotiate individually with every member of parliament. Second, it helps to ensure executive stability, as it prevents members of parliament from voting against their own party leadership irresponsibly or simply as a matter of protest; they will do so only if there are good reasons and they are willing to bear responsibility for their votes.

### Time limits and deadlock-breaking mechanisms

Many constitutions place a time limit on the government formation process. If this time limit is reached without completing the government formation process, then a deadlock-breaking mechanism (such as dissolution of parliament) may be triggered. The threat of dissolution can encourage political parties (who might be reluctant to face another election so soon after the previous election, and do not wish to take the blame for causing unnecessary delays or uncertainty) to come to an agreement and enable a government to be formed.

- In Spain, the constitution provides that, ‘If within two months of the first vote for investiture no candidate [for prime minister] has obtained the confidence of the Congress, the King shall dissolve both Houses and call for new elections, with the countersignature of the Speaker of the Congress’ (section 99).

This time limit typically varies from a few weeks to several months, and may be reckoned from the date of the preceding general election or from the date of the resignation of a previous government. In setting a time limit, it is necessary to

strike an appropriate balance between: (a) the need for a swift conclusion to the process in order to avoid the weakness and instability of a long interregnum between prime ministers; and (b) the fact that it can take some time to negotiate a stable and viable coalition agreement, and that while unnecessary delay is to be avoided, it is also inadvisable to rush the process because of a constitutional deadline that is too tight or too rigidly set.

In some cases, there may be no fixed time limit, and the question of whether and when to dissolve parliament may be left to the discretion of the head of state. This approach is more flexible, but might also give the head of state excessive influence over the government formation process.

- The Constitution of Malta states that, ‘if the office of Prime Minister is vacant and the President considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, the President may dissolve Parliament’. It is explicitly provided that this power is a ‘reserve power’ that the President may exercise at his or her own discretion, without having to act in accordance with prime ministerial advice (article 76).

One possibility is to specify a time limit that can be extended by the head of state if necessary. This allows for some flexibility, while keeping some restrictions on the head of state’s personal discretion:

- In Croatia, the president nominates a prime minister who then has 30 days to form a government and receive a parliamentary vote of investiture; if a vote of investiture is not passed in this time, the president may decide to allow a further period of thirty days (articles 109–12).

Another alternative is for the constitution to provide for a limited number of attempts at government formation rather than a time limit. For example, in a country where the prime minister is elected by parliament, there may be a limited number of rounds of voting, after which, if no candidate receives a majority, dissolution is required. This may provide a softer and more flexible deadline, since if the number of attempts, rather than the passage of days, is counted, then attempts may be delayed until such time as a successful attempt is likely.

- In Sweden, the constitution provides that, ‘If the Riksdag [parliament] rejects the Speaker’s proposal four times, the procedure for appointing a Prime Minister is abandoned and resumed only after an election to the Riksdag has been held. If no ordinary election is due in any case to be held

within three months, an extraordinary election shall be held within the same space of time' (chapter 6, article 5).

Finally, deadlocks may be broken by shifting from one form of formation process to another. So, for example, if the initial formation rule allows parliament to elect a prime minister, the rules may allow the head of state to make a discretionary appointment in default of an election. Conversely, where the formation rule requires parliamentary approval of a candidate nominated by the head of state, the deadlock-breaking mechanism may be for parliament to elect a candidate at its own initiative.

## Further rules for government removal

### Removal by failure to pass budget or legislation

A formal vote of no confidence is not always required to remove a government. In many cases, the defeat in parliament of the government's proposed budget will (usually by convention but sometimes by specific constitutional rules) be treated as a loss of confidence. This is because a government that cannot 'obtain supply'—that is, raise and levy taxes—cannot govern, and must in most cases make way for one that can. By these means, the government shutdowns seen in some presidential–congressional systems are usually avoided in parliamentary democracies.

- The Constitution of Georgia states that, 'If Parliament fails to adopt [a] State Budget within two months after the beginning of a new budget year, this shall be regarded as raising a question of giving a vote of no confidence . . . If Parliament fails to give the Government a vote of no confidence within the [prescribed time frame], the President shall dismiss Parliament within three days after the above term expires and shall call extraordinary elections' (article 93).

In some cases, moreover, the government may declare a legislative bill or statement of policy to be a matter of confidence. If parliament rejects the bill or votes against the statement of policy, this will be treated by the government as a loss of confidence. This is usually only a matter of convention. However, such rules are formally expressed in some constitutions.

- In Estonia, for example, the Constitution provides that, 'The Government of the Republic may bind the passage of a bill it introduces to the Riigikogu [parliament] to the issue of confidence. Voting shall not take place earlier than on the second day after the bill is bound to the issue of

confidence. If the Riigikogu does not pass the bill, the Government shall resign' (article 98).

### Majorities required for votes of no confidence

Just as the size of majority required to approve the formation of the government may vary, there may likewise be different majorities needed for the removal of a government.

- If the constitutional rules make it too easy to remove a government, then the result may be instability. To prevent this, various mechanisms have been devised to make sure that a vote of no confidence can only be passed in a highly formal and solemn way—after giving due notice, with a quorum present, by a roll-call vote, with an absolute majority or with a 'constructive vote of no confidence' (see below).
- If the removal of a government is too difficult, the government's responsibility to parliament may be undermined. Anything more than an absolute majority requirement would generally be seen as a violation of the basic principles of parliamentary democracy.
- In general, constitutional rules that make it easy to remove a government, but difficult to form an alternative government, should be avoided, since the result may be both deadlock and instability. So, for example, it might make sense to require approval by simple majority to nominate a prime minister, but an absolute majority to remove a prime minister, but the opposite arrangement would be unstable and irrational.

### Limits on introducing motions of no confidence

Some constitutions place various procedural limits on motions of no confidence. First, constitutions may require a certain number of days' notice before a vote of no confidence is held. In Belgium (art. 46), 'The motions of confidence and no confidence can only be voted on forty-eight hours after the tabling of the motion', while in Italy (art. 94), 'A motion of no-confidence ... cannot be debated earlier than three days from its presentation.' Such provisions are intended to ensure that the government is not brought down by a sudden vote that is scheduled to take members of parliament by surprise. Even if these provisions are not included in the constitution, they may nevertheless be included in parliament's standing orders.

A second common procedural limitation is to require that a motion of no confidence be proposed by a sizeable bloc of parliamentarians, thereby demonstrating that there is substantial parliamentary support for holding a vote

of no confidence, and that the demand for a vote of no confidence is not being made irresponsibly by one or a few isolated members. In Italy, one-tenth of members must support a motion of no confidence (article 94), in Bulgaria one-fifth (article 89) and in Serbia 60 out of a total of 250 deputies (article 130).

Third, limitations may be placed on the frequency of votes of no confidence, so that if a vote of no confidence is proposed but not approved, then another vote of no confidence cannot be held within a certain period of time. This gives governments, in effect, a period of immunity from parliamentary responsibility after an unsuccessful vote of no confidence. It is intended to increase executive stability and to prevent minority groups from misusing votes of no confidence as a means of gaining attention or frustrating the parliamentary majority.

- In Bulgaria ‘Should the National Assembly reject a vote of no confidence in the Council of Ministers, the next motion for a vote of no confidence on the same grounds shall not be made within six months’ (article 89).
- In Croatia, ‘If Parliament rejects the proposal for a vote of no confidence, the representatives who have submitted it may not make the same proposal again before the expiry of six months’ (article 116)

While such provisions may help ensure executive stability, the potential side effects, in terms of a loss of political accountability, should not be ignored. Restrictions on the use of votes of no confidence may undermine the parliamentary system by denying the ongoing responsibility of the government to the parliamentary majority. For example, the 2015 Constitution of Nepal does not allow a motion of no confidence to be presented during the first two years after the appointment of a prime minister or within one year of the previous vote of no confidence. Such provisions are intended to enhance the stability of the government, but mean that the government is not at all times politically responsible to the parliamentary majority. In effect, they transform a parliamentary system into something like an ‘Assembly–Independent’ system (one in which the executive is chosen by parliament, but not dependent on continued parliamentary confidence).

#### Government-requested votes of confidence

A vote of confidence is usually initiated by the government in an attempt to demonstrate its parliamentary support, with a view to strengthening its authority. In placing the issue of confidence before parliament, the government forces parliament to support it or else to declare its lack of support in an unequivocal way. This is a risky tactic, since if the government loses a vote of confidence, then it will have to resign or, in some circumstances, dissolve parliament and face an election. However, it might be used as a way of consolidating support at times

when the government's moral authority or democratic mandate is called into question in some way (for example, in response to a crisis or the defeat of the government on a major piece of legislation).

### Constructive votes of no confidence

A constructive vote of no confidence is a means of removing one prime minister and simultaneously designating another. It enables a change of government to take place during the course of the term of a parliament, without risking either a period of caretaker government or a premature dissolution. Because a government can only be replaced if there is agreement on an alternative, this supports executive stability by preventing a government from being brought down by a temporary alliance of opposing extremes.

- The German Constitution states that, 'The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected' (article 67).

A constructive vote of no confidence has since been emulated by other countries. It can be found, in various forms, in the 1978 Constitution of Spain (section 113), the 1994 Constitution of Belgium (article 96), and the 2011 Constitution of Hungary (article 21).

## 5. Additional design considerations

---



### Prime-ministerial term limits

In some countries, it is technically incorrect to speak of the prime minister serving ‘terms’ of office; they simply serve from appointment to dismissal, so long as they retain the confidence of parliament, regardless of how many parliamentary elections take place during their tenure. In other jurisdictions—and in particular in those where a prime minister has to be formally elected, approved or invested by parliament after each general election—it does make sense to speak of prime ministers serving for a number of terms, although always with the caveat that a prime minister’s term can be terminated prematurely if parliament passes a vote of no confidence or if parliament is prematurely dissolved.

In a very small number of cases, a prime minister may be limited to a certain number of such terms. In the Cayman Islands (article 49), for example, no one may be chosen as premier ‘who has held office as Premier during two consecutive parliamentary terms unless at least one parliamentary term has expired since he or she last held that office’. This means that, in effect, a premier cannot serve for more than eight years, and then would have to be out of office for up to four years. The pros and cons of such restrictions on re-election are beyond the scope of this primer, but it is worth noting that if one wishes to introduce term limits for the prime minister, there is at least one example of how this can be achieved by means of constitutional provisions.

## Appointment of ministers

In some countries, parliament's confidence in the government is centred on the person of the prime minister, and the prime minister appoints and dismisses other ministers without a requirement for parliamentary approval.

In Germany, for example, the *Bundestag* (lower house) elects and can remove the chancellor, but the chancellor can freely appoint and dismiss their other ministers without needing the approval of the *Bundestag*. Similarly, the *Bundestag* cannot remove an individual minister; their individual responsibility is only to the chancellor, and they can continue in office as long as they have the chancellor's confidence.

In others, the government as a whole needs parliamentary approval, and confidence is expressed not in the prime minister alone but in the government collectively.

- In Ireland, for example, ministers can only be appointed after they have received the previous approval of the lower house (article 13.1.2).
- In Italy, the vote of investiture approves the government—the prime minister and ministers—collectively (article 94).

In principle, the former arrangement, as practiced in Germany, implies a more hierarchical, and less collegial, relationship between the prime minister and cabinet. The latter arrangement, exemplified by Ireland and Italy, emphasizes the collegiality of the government. In practice, much depends on the political situation. A loosely agreed coalition government will have to be more responsive to the needs of different parties in the appointment of the government, while a single-party majority government will tend to concentrate powers in the hands of the prime minister. This is because when a prime minister depends on coalition partners to sustain a parliamentary majority, those coalition partners may be in a stronger position to negotiate on the composition of the cabinet.

## Should ministers be members of parliament?

### Option 1: Ministers must be members of parliament

In some countries, the rule is that all cabinet ministers must be appointed from among members of parliament. This arrangement is common in those countries that were influenced by the British-derived Westminster model, such as Australia, Barbados and Ireland, and many other places.

Requiring ministers to be members of parliament emphasizes the closeness of the relationship between the executive and legislature, leadership of both being



concentrated in the cabinet. In essence, the cabinet is a sort of executive committee of the legislature, which leads, but at the same time is always responsible to, the parliamentary majority. The recruitment of ministers solely from the ranks of parliamentarians means that governments are always deeply embedded in parliamentary politics. Ministers usually have several years of parliamentary experience before becoming ministers and are therefore thoroughly acculturated to parliamentary norms.

This close connection is sustained on a daily basis as ministers attend parliamentary sessions, take part in debates and justify their actions to their peers in parliamentary questions. It also integrates government in parliamentary life, preventing the formation of extra-parliamentary technocratic cabinets and in many cases also requiring ministers, as constituency representatives, to remain in touch with public opinion as expressed in constituency correspondence and casework.

In countries following this model, it is also often a rule that persons who were members of parliament immediately prior to dissolution can continue to serve in ministerial office for a limited period, usually ending a few months after the next elections. This prevents difficulties that might otherwise arise if a minister has to be appointed while parliament is dissolved and also enables a government to remain in office in a caretaker capacity, even if its members are defeated in the election, until a new government can be appointed.

The disadvantage of having to appoint ministers exclusively from among the members of parliament, however, is that it limits the field from which ministers may be recruited. The available candidates for ministerial office might not be the best, especially since the qualities required to be a successful parliamentarian and good constituency representative are not necessarily those required to be a good minister. Likewise, a competent minister who happens to lose his or her seat will be excluded from office, unless a way can be found (such as by means of a by-election) for that person to re-enter parliament.

Moreover, having to juggle ministerial with parliamentary and perhaps also constituency duties places considerable demands on the time, energy and resources of ministers; it has been argued that this distracts ministers from their strategic leadership and policymaking functions, resulting in a less competent government (King and Crewe 2013).

### Option 2: Ministers cannot be members of parliament

In other countries, ministerial office and parliamentary office are mutually exclusive. Ministers may be (and often are) appointed from outside of parliament, and members of parliament who are appointed to ministerial office have to resign their parliamentary seats. This arrangement is found more often in countries that derive their parliamentary institutions from continental European traditions, such as the Netherlands.

This arrangement means that some partial separation of the legislative and executive powers is maintained. Although the government, in a parliamentary system, must have the confidence of parliament and is responsible to parliament, and although the ties of partisanship that bind ministers to the parliamentary majority may still be strong, the fusion of executive and legislative powers is impeded by the fact that a person cannot be a member of both the government and parliament at the same time. This separation of personnel opens up two alternative career paths for politicians: a ministerial path that involves distancing oneself from parliament to go into executive office, and parliamentary path that involves eschewing ministerial office to concentrate on legislative leadership and committee work. This may cause the legislature to have a stronger collective sense of itself as a separate institution vis-à-vis the executive, with a partial separation of powers notwithstanding the principle of parliamentary confidence. This, in turn, may result, especially when combined with a proportional electoral system, in a more active legislature that is divided less along the rigid lines of government and opposition benches, and that has a stronger role in scrutiny and law-making—although there may be some consequent loss of executive stability.

This arrangement also makes the appointment of extra-parliamentary cabinets composed of technocratic ministers without any clear political base of support more feasible. While this may help the state to weather certain political crises, when a government cannot otherwise be formed, there is some risk that over-reliance on technocratic cabinets may undermine the role of parties and thereby destabilize democratic politics in the longer term (Skach 2010).

Even though ministers cannot be members of parliament, they may be authorized or required to attend parliament, in a non-voting capacity, to make statements and to answer questions.

### Option 3: Mixed approaches

There are various mixed approaches that a country might adopt. One possibility is to allow ministers to be appointed from among the members of parliament but not to make membership of parliament a requirement. This is potentially a flexible approach, the effect of which is likely to depend on prevailing customs and patterns of ministerial appointment.

Another possibility is to allow a certain number of ministers to be appointed from outside of parliament, while others must be chosen from among the rankings of parliamentarians.

- In Japan, a majority of the cabinet ministers must be members of parliament (article 68), with the implication that a minority of the ministers need not be.

- In Bangladesh, the Constitution requires that nine-tenths of the ministers be appointed from among the members of parliament, but allows up to one-tenth to be appointed from outside of parliament (article 56).

In both of these examples, the prime minister must be chosen from among the members of parliament. Such provisions prevent the formation of entirely technocratic, extra-parliamentary governments and ensure that the government is firmly rooted in a parliamentary party with some democratic legitimacy. At the same time, however, they allow for a certain number of non-parliamentarians to be recruited to the government on the basis of their specialist skills, qualifications and experience.

## Number of ministers

If ministers can be appointed from among the members of parliament, there is a risk that the government can dominate parliament by appointing a large number of members as ministers. The doctrine of collective responsibility means that ministers cannot vote against the government in parliament (unless, in exceptional circumstances, they are willing to resign from ministerial office).

The ‘payroll’ vote, as it is called (because ministers are on the government’s payroll) can be very influential in securing the loyalty and obedience of backbench parliamentarians. Governments may attempt to appoint oversized cabinets, or a large number of junior ministers, to increase the influence of the payroll vote. As well as weakening parliament, this tactic can lead to bloated, inefficient government. To prevent this, some constitutions place limits on the number of ministers that may be appointed and hold office at any time. The Constitution of India (article 75), for example, restricts the number of ministers to 15 per cent of the total number of members of the lower house.

The payroll vote is particularly a problem in very small parliaments. The Parliament of Gibraltar, for example, has just 17 members, 10 of whom are ministers. In these conditions, the distinction between legislative and executive functions is lost, and there is no realistic possibility of parliament, as a body, exercising effective control over ministers. In Belize, the Constitution (section 40(2)) seeks to prevent this by limiting the number of Ministers to two-thirds of the number of members of the majority party in the lower house.

## Communal representation in cabinet

If it has been decided to accommodate societal divisions through consociational power-sharing mechanisms, this may have to be reflected in the composition of the cabinet, and therefore in the government formation process.

- In Belgium, for example, the constitution mandates that the cabinet include an equal number of Dutch-speaking and French-speaking ministers (article 99).
- In Bosnia and Herzegovina, the Constitution requires that no more than two-thirds of the cabinet ministers be appointed from one of the country's two state entities, with the other third being appointed from the other entity (article V.4).
- In the devolved administration of Northern Ireland, the Assembly elects a first minister and a deputy first minister. These represent different communities: if the first minister comes from the Protestant community, the deputy first minister must come from the Catholic community (and vice versa) (Northern Ireland Act 1998 [UK], section 16A).
- In the interim constitution of South Africa (1994–96), any party winning at least 5 per cent of the votes was entitled to be included in the cabinet. This was to ensure that the cabinet was representative of all aspects of a racially diverse society, including the white minority (section 88).

Such provisions can have certain disadvantages. For example, they may make forming a government more difficult, since it might be not only necessary to win the support of a parliamentary majority but also to pay attention to the composition of that majority to ensure that it represents a sufficiently broad base. Or these provisions may result in such large, heterogeneous coalitions that effective, programmatic government is hindered. There is also the argument that entrenching such communal divisions in the constitution causes these divisions to become more, not less, salient, and prevents the formation of a unified sense of national identity. Of course, these disadvantages may well be worthwhile, given that the alternative could be the break-up of the state or inter-communal violence.

Another option that may potentially be open to constitution-makers in such circumstances is to adopt a highly proportional electoral system, with a very low minimum threshold for representation. This means that small minorities can be represented in parliament, but without any constitutional requirement for minority inclusion in the cabinet. This may be effective as a means of flexible (rather than rigidly prescribed) power-sharing, especially in situations where there

is no one natural majority and where the lines demarcating different communities are more fluid. In the Netherlands and Israel, for example, this approach has resulted in inclusive, multiparty governments that have bridged religious–secular divisions. However, this may also lead to problems, such as a lack of a clear link between parliamentary election results and the formation of a government (due to the fact that post-election bargaining is the key determinant of government office), long delays between parliamentary elections and the completion of the government formation process, and the excessive fragmentation of parliament—which may lead to immobilism.

## Gender inclusion

Many countries around the world make provision, whether on a constitutional or legislative basis, for the promotion of gender balance in legislatures, for example through reserved seats or candidate quotas. Some governments have adopted the principle of gender-balanced cabinets as a matter of practice (e.g. Canada under the premiership of Justin Trudeau). It would be a small step from existing practices of communal representation, as discussed above, to require cabinets to be formed on the basis of gender inclusion (so that, for example, no more than one-third of the members of the cabinet can be men or women).

## Changes of government

Parliamentary systems may experience a period of transition between the resignation or removal of one government and the formation of the next government. A similar period of transition may occur during the interval between the dissolution of parliament and the completion of the government formation that follows the subsequent general election.

During this period (which may be a matter of days or weeks, or sometimes even months), the country may be said to lack a government. Of course, this should not be taken literally. The state must still function and the governance of the country must still be carried on. The usual practice in such circumstances is for the ministers who have resigned or been removed to continue in office, in a so-called caretaker role, until a new government is formed. In many cases, this is a matter of convention, but for the avoidance of doubt it may be expressly articulated in the constitution:

- In Sweden, for example, the Constitution states that, ‘If all the members of the Government have been discharged, they remain at their posts until a new Government has assumed office. If a minister other than the Prime Minister has been discharged at his or her own request, he or she remains

at his or her post until a successor has assumed office, should the Prime Minister so request (Instrument of Government: chapter 7, article 11).

- The Constitution of Bulgaria states that if the Council of Ministers resigns or is removed by a vote of no confidence, the existing members of the Council of Ministers shall continue in office until their successors are installed (article 111.3).

Because such ministers lack the confidence of parliament, however, their functions are usually limited to routine and urgent matters. The caretaker ministers are not supposed to introduce new policy initiatives or legislation unless absolutely necessary; and, in such cases, they should seek the agreement of any potential incoming prime minister if feasible to do so. Constitutions rarely express these restrictions on caretaker governments in clear, justiciable terms. Such rules are usually unwritten, dependent on convention, and unenforceable—and governments acting in a caretaker capacity are expected to act on trust not to exceed the necessary boundaries of their role. Some constitutions, however, have gone much further in trying to maintain stability during this caretaker period, particularly if there is a dissolution of parliament and a general election. They have done this, in part, because the constitution-makers feared that incumbent governments could not be trusted to administer the state fairly during the caretaker period—that they would use their influence during this time to intimidate opponents, to favour supporters and to entrench themselves in office.

One notable experiment was conducted in Bangladesh, where the Constitution until recently made provision for a non-party caretaker government headed by a chief advisor, who had to be a retired judge, appointed by, and responsible to, the (otherwise ceremonial) president. The functions and duties of the non-party caretaker government were also specified, as the Constitution provided (article 58D, now repealed) that it must: ‘discharge its functions as an interim government’, ‘carry on the routine functions’, ‘except in case of necessity ... not make any policy decision’, and ‘give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of parliament peacefully, fairly and impartially’. This arrangement was and is politically controversial, and it has since been repealed. However, it did seem to play a positive role in the consolidation of democracy in Bangladesh, and the abolition of this provision coincided with a resurgence of electoral violence, boycotted elections and one-party domination (Riaz 2014).

### Think Point 3

Are the constitutional rules on government formation and removal clear, comprehensive and internally consistent? Is it assured that, at any given time, there is a government in office (even if only in a caretaker capacity)? Are all aspects of the process set out in the constitution in a way that is seen as fair and justifiable, and that is not subject to unnecessary delays, disputes or deadlocks?

## 6. Contextual considerations

---



### Party system and electoral law

Political parties play an important role in parliamentary democracy. Alongside their other functions, political parties structure the government formation process. Coalitions, for example, are formed between parties, not between individuals. In some cases, coalition agreements are (as a matter of conventional practice, not constitutional law) subject to approval by party caucuses or by party conferences before being finalized. Party discipline is integral to the harmonious relationship between the government and parliament. Without party discipline, the government may be unable to pursue a coherent policy, pass a budget or deliver its manifesto commitments.

In situations where political parties are weak or non-existent (such as in the Canadian territory of Nunavut or in the Solomon Islands), government formation mechanisms based on the assumption that there will be a clear leader of a majority party are inappropriate, and the contested election of a prime minister by parliament may be necessary (in such elections, the members vote as individuals, not as members of parties).

The difficulty and complexity of the government formation process will also greatly depend upon the structure of the party system. Where parliamentary elections generally result in one party having an overall majority in parliament, the government formation process may be no more than a formality by which the leader of that party is appointed as prime minister. There might be little need in such cases for deadlock-breaking mechanisms, time limits, investiture votes, constructive votes of no confidence or other sophisticated constitutional provisions of this sort. However, if there is a multiparty system, such that no one party is likely to win an overall majority in parliament, the political aspects of the





government formation process may be both more complicated and more prolonged, and these constitutional mechanisms may be required to structure and accommodate the process. It is important, therefore, to consider that a government formation process that has worked well under a majoritarian electoral system may work less well, and need to be changed, if a proportional electoral system is adopted.

If the party system becomes overly fragmented, with a large number of very small parties, then government formation can become difficult, since agreements will have to be reached with many party leaders in order to form a majority. Governments consisting of many small parties might also be unable to pursue an effective policy agenda, and might be vulnerable to premature collapse if one or more of the minor coalition partners withdraws support. Under such conditions, parliamentary democracy can become deadlocked—a situation known as immobilism, since forward movement is difficult. Frustration with this stage of affairs may encourage some leaders (whether majoritarian populists or anti-democratic autocrats) to bypass parliamentary institutions and look for alternatives such as strongly presidentialist government. This excessive fragmentation may call for constitutional mechanisms that make it relatively easy to form a government and difficult to remove a government. In Germany, for example, where excessive fragmentation during the Weimar Republic period (1919–33) had contributed to the collapse of democracy, the current Constitution allows for the election of a chancellor by a simple majority vote (article 63.4) and requires a constructive vote of no confidence to remove the chancellor.

The risk of excessive fragmentation may also be reduced by including thresholds or hurdles in the electoral system. In Germany, the electoral law requires that a party receive at least 5 per cent of the vote nationally or win a plurality in at least three constituencies in order to share in the distribution of parliamentary seats. This rule means that there is less of an incentive for parties to split into smaller factions that would not be able to win any seats, and more of an incentive for very small parties to coalesce into larger parties that have a chance of overcoming this threshold.

## 7. Decision-making questions

---



1. What balance do you wish to strike between, on the one hand, making the government formation process as easy as possible and ensuring a certain degree of executive stability, and, on the other hand, ensuring the ongoing responsibility of the government to parliament? How effectively does the existing or proposed constitutional text strike this desired balance?
2. What is the electoral system and the party system? How easy or difficult will it generally be, in political terms, to form a government? How disciplined are parties, and is it generally expected that governments, once formed, will last for the whole duration of the parliamentary term? Is it wise to consider mechanisms that will encourage government formation (such as deadlock-breaking mechanisms) or that will strengthen executive stability (such as requiring a constructive vote of no confidence)?
3. What is the intended role of the head of state in the political system? If the intention is to create a genuinely parliamentary democracy in which the head of state's role is ceremonial and impartial, are there sufficient provisions in place to: (a) prevent the head of state from exercising personal influence in the government formation and removal process; and (b) protect the head of state from any politically embarrassing or compromising situation in which his or her impartiality is questioned?
4. Where a country has previous experience of parliamentary democracy, has consideration been given to previous constitutional rules regarding government formation and removal? How did these rules work? Did they create any difficulties or anomalies? Do changes in the current situation mean that these rules also need to be changed?



5. Are there any special contextual considerations arising out of a divided society that may call for guaranteed communal representation in the cabinet? What might the disadvantages of such an arrangement be, and are these disadvantages acceptable? What other ways could be considered to protect the interests of communities (guaranteed language rights, non-territorial autonomy, personal-status laws, decentralization, minority veto rules etc.) without affecting government formation?
6. Are the government formation and removal mechanisms sufficiently robust and ‘watertight’—in the sense that they do not leave gaps in the process (for example, when a government cannot be formed but there is no deadlock-breaking mechanism, or when a government resigns but there is no caretaker provision)?
7. How well do the government formation and removal rules fit with the dissolution rules? Do these work together in a logically consistent way?

## 8. Examples



### Negative parliamentarism

Table 7.1. Bangladesh: Negative formation rule with mandate to appoint on the basis of confidence

<b>Government formation rules</b>	'The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament.'
<b>Deadlock-breaking mechanism</b>	No constitutional regulation (although there is provision for the dissolution of parliament)
<b>Government removal rules</b>	'The Cabinet shall be collectively responsible to Parliament. If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President in writing to dissolve Parliament, and if he so advises the President shall, if he is satisfied that no other member of Parliament commands the support of the majority of the members of Parliament, dissolve Parliament accordingly.'
<b>Ministerial appointments</b>	'Not less than nine-tenths of [the ministers] shall be appointed from among members of Parliament; not more than one-tenth of their number may be chosen from among persons qualified for election as members of Parliament.' 'If occasion arises for making any [cabinet appointment] between a dissolution of Parliament and the next general election of members of parliament, the persons who were such members immediately before the dissolution shall be regarded for the purpose of this clause as counting to be such members.' No constitutional regulation of the number of ministers.
<b>Caretaker provisions</b>	Nothing disqualifies the prime minister from holding office until his or her successor has entered office.

<b>General comments</b>	Bangladesh is an example of negative parliamentarism, since there is no requirement for an election in parliament, vote of confidence or vote of investiture to approve the formation of the government; the president is simply required by the Constitution to appoint as prime minister the member who best enjoys the confidence of a majority of the members of parliament. This means that the absence of a specific deadlock-breaking mechanism is unimportant, since the president can always appoint a prime minister even if that prime minister's only act is to advise the president to dissolve parliament so that new elections can be held before he or she is defeated in parliament.
-------------------------	---

## Positive parliamentarism

Table 7.2. Ireland: Nomination of prime minister by parliamentary resolution

<b>Government formation rules</b>	<p>'The President shall, on the nomination of [the] <i>Dáil Éireann</i> [lower House of parliament], appoint the ... <i>Taoiseach</i> [Prime Minister].'</p> <p>'The President shall, on the nomination of the Prime Minister with the previous approval of [the] <i>Dáil Éireann</i>, appoint the other members of the Government (article 13).'</p>
<b>Deadlock-breaking mechanism</b>	No constitutional regulation
<b>Government removal rules</b>	<p>'The President shall, on the advice of the Taoiseach, accept the resignation or terminate the appointment of any member of the Government.'</p> <p>'The Prime Minister shall resign from office upon his ceasing to retain the support of a majority in [the] <i>Dáil Éireann</i> unless on his advice the President dissolves [the] <i>Dáil Éireann</i> and on the reassembly of [the] <i>Dáil Éireann</i> after the dissolution the Prime Minister secures the support of a majority in [the] <i>Dáil Éireann</i>.'</p>
<b>Ministerial appointments</b>	The prime minister, deputy prime minister and the member of the government who is in charge of the Department of Finance must be members of the <i>Dáil Éireann</i> . The other members of the government must be members of the <i>Dáil Éireann</i> or the <i>Seanad Éireann</i> (upper house), but not more than two may be members of the <i>Seanad Éireann</i> . The government shall consist of not fewer than seven and not more than 15 members.
<b>Caretaker provisions</b>	<p>If the prime minister at any time resigns from office, the other members of the government shall be deemed also to have resigned from office, but the prime minister and the other members of the government shall continue to carry on their duties until their successors have been appointed.</p> <p>The members of the government in office on the date of the dissolution of the <i>Dáil Éireann</i> will continue to hold office until their successors have been appointed.</p>
<b>General comments</b>	Ireland is an example where the prime minister is nominated by parliament; both the appointment of the prime minister and the composition of the government require parliamentary approval. The government must resign if it loses the confidence of parliament.

Table 7.3. Germany: Election by parliament, initially on the proposal of the head of state

<b>Government formation rules</b>	'The Federal Chancellor [Prime Minister] shall be elected by the Bundestag without debate on the proposal of the Federal President. The person who receives the votes of a majority of the Members of the Bundestag shall be elected. The person elected shall be appointed by the Federal President.'
<b>Deadlock-breaking mechanism</b>	If the person proposed by the federal president is not elected, the Bundestag may elect a federal chancellor within 14 days after the ballot by the votes of more than one-half of its members. If no federal chancellor is elected within this period, a new election will take place without delay in which the person who receives the largest number of votes shall be elected. If the person elected receives the votes of a majority of the members of the Bundestag, the federal president must appoint him or her within seven days after the election. If the person elected does not receive such a majority, then within seven days the federal president must either appoint him or her or dissolve the Bundestag.
<b>Government removal rules</b>	<p><i>Removal by failure of a vote of confidence:</i></p> <p>If a motion of the federal chancellor for a vote of confidence is not supported by a majority of the members of the Bundestag, the federal president, upon the proposal of the federal chancellor, may dissolve the Bundestag within 21 days. The right of dissolution will lapse as soon as the Bundestag elects another federal chancellor by a vote of a majority of its members. Forty-eight hours must elapse between the motion and the vote.</p> <p><i>Removal and replacement by constructive vote of no confidence:</i></p> <p>The Bundestag may express its lack of confidence in the federal chancellor only by electing a successor by a vote of a majority of its members and requesting that the federal president dismiss the federal chancellor. The federal president must comply with the request and appoint the person elected. Forty-eight hours must elapse between the motion and the election.</p>
<b>Ministerial appointments</b>	By president upon the binding nomination of the federal chancellor; no parliamentary approval required.
<b>Caretaker provisions</b>	At the request of the federal president, the federal chancellor, or at the request of the federal chancellor or of the federal president, a federal minister will be obliged to continue to manage the affairs of his or her office until a successor is appointed.
<b>General comments</b>	The German system of government formation is sometimes referred to as a 'chancellor democracy' because only the chancellor (and not the rest of the government) is approved by parliament.



**Table 7.4. Greece: Directive formation rules (primacy of largest parties based on number of seats held)**

<p><b>Government formation rules</b></p>	<p>'The leader of the party having [an] absolute majority of seats in Parliament shall be appointed Prime Minister. If no party has [an] absolute majority, the President of the Republic shall give the leader of the party with a relative majority an exploratory mandate in order to ascertain the possibility of forming a Government enjoying the confidence of the Parliament. If this possibility cannot be ascertained, the President of the Republic shall give the exploratory mandate to the leader of the second largest party in Parliament, and if this proves to be unsuccessful, to the leader of the third largest party in Parliament. Each exploratory mandate shall be in force for three days.'</p>
<p><b>Deadlock-breaking mechanism</b></p>	<p>'If all exploratory mandates prove to be unsuccessful, the President of the Republic summons all party leaders, and if the impossibility to form a Cabinet enjoying the confidence of the Parliament is confirmed, he shall attempt to form a Cabinet composed of all parties in Parliament for the purpose of holding parliamentary elections. If this fails, he shall entrust the President of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Audit to form a Cabinet as widely accepted as possible to carry out elections and dissolves Parliament.'</p>
<p><b>Government removal rules</b></p>	<p>'The President of the Republic shall relieve the Cabinet from its duties if the Cabinet resigns, or if Parliament withdraws its confidence.'</p> <p>'The Government must enjoy the confidence of Parliament. The Government shall be obliged to request a vote of confidence by Parliament within fifteen days of the date the Prime Minister shall have been sworn in, and may also do so at any other time. If at the time the Government is formed, Parliament has suspended its works, it shall be convoked within fifteen days to resolve on the motion of confidence.'</p> <p>Parliament may decide to withdraw its confidence from the government or from a member of the government. A motion of censure may not be submitted before six months has passed from the rejection by parliament of such a motion.</p> <p>A motion of censure must be signed by at least one-sixth of the number of members of parliament and must explicitly state the subjects on which a debate is to be held.</p> <p>A motion of censure may, exceptionally, be submitted before six months has passed if it is signed by a majority of the total number of members of parliament.</p> <p>A debate on a motion of confidence or censure must commence two days after the motion is submitted unless, in the case of a motion of censure, the government requests its immediate commencement: in all cases the debate may not be prolonged for more than three days from its commencement.</p> <p>A vote on a motion of confidence or censure is held immediately after the termination of the debate; it may, however, be postponed for 48 hours if the government so requests.</p> <p>A motion of confidence cannot be adopted unless it is approved by an absolute majority of the present members of parliament, which, however, cannot be less than the two-fifths of the total number of the members.</p>
<p><b>Ministerial appointments</b></p>	<p>'The President of the Republic shall appoint the Prime Minister and on his recommendation shall appoint and dismiss the other members of the Cabinet and the Undersecretaries. The composition and functioning of the Cabinet shall be specified by law.'</p>

<b>Caretaker provisions</b>	'Should the Prime Minister resign, be deceased or be unable to discharge his duties due to reasons of health, the President of the Republic shall appoint as Prime Minister the person proposed by the parliamentary group of the party to which the departing Prime Minister belongs, provided that this has the absolute majority of the seats in Parliament.' Until the appointment of a new prime minister, the duties of the prime minister are exercised by the first deputy prime minister and, in case no deputy prime ministers have been appointed, by the first minister in order of seniority.
<b>General comments</b>	The Greek Constitution is unusual in the level of detail it includes, both with regard to the directive process for government formation—which gives primacy to the leader of the party that wins an absolute majority or, in the absence thereof, to the leader of the party that wins a relative majority (plurality) in parliament. It should be noted that in the Greek case this government formation process is augmented by the electoral system, which gives a bloc of top-up seats to the party that wins a plurality of the votes in a general election.



Table 7.5. Sweden: Approval by parliament

<b>Government formation rules</b>	'When a Prime Minister is to be appointed, the Speaker summons for consultation representatives from each party group in the Riksdag [Parliament]. The Speaker confers with the Deputy Speakers before presenting a proposal to the Riksdag. The Riksdag shall vote on the proposal within four days, without prior preparation in committee. If more than half the members of the Riksdag vote against the proposal, it is rejected. In any other case, it is adopted.'
<b>Deadlock-breaking mechanism</b>	'If the Riksdag rejects the Speaker's proposal, the procedure laid down [above] is repeated. If the Riksdag rejects the Speaker's proposal four times, the procedure for appointing a Prime Minister is abandoned and resumed only after an election to the Riksdag has been held. If no ordinary election is due in any case to be held within three months, an extraordinary election shall be held within the same space of time.'
<b>Government removal rules</b>	<p>'If the Riksdag declares that the Prime Minister, or a member of his or her Government, no longer has its confidence, the Speaker shall discharge the minister concerned. However, if the Government is in a position to order an extraordinary election to the Riksdag and does so within one week from a declaration of no confidence, the minister shall not be discharged.'</p> <p>'No later than two weeks after it has convened, a newly-elected Riksdag shall determine by means of a vote whether the Prime Minister has sufficient support in the Riksdag. If more than half of the members of the Riksdag vote no, the Prime Minister shall be discharged. No vote shall be held if the Prime Minister has already been discharged.'</p>
<b>Ministerial appointments</b>	<p>'When the Riksdag has approved a proposal for a new Prime Minister, the Prime Minister shall inform the Riksdag as soon as possible of the names of the ministers. Government changes hands thereafter at a Council of State before the Head of State or, in his or her absence, before the Speaker. The Speaker is always summoned to attend such a Council. The Speaker issues a letter of appointment for the Prime Minister on the Riksdag's behalf.'</p> <p>'A minister shall be discharged if he or she so requests; in such a case the Prime Minister is discharged by the Speaker, and any other minister by the Prime Minister. The Prime Minister may also discharge any other minister in other circumstances.'</p> <p>'If the Prime Minister is discharged or dies, the Speaker discharges the other ministers.'</p>
<b>Caretaker provisions</b>	'If all the members of the Government have been discharged, they remain at their posts until a new Government has assumed office. If a minister other than the Prime Minister has been discharged at his or her own request, he or she remains at his or her post until a successor has assumed office, should the Prime Minister so request.'
<b>General comments</b>	Sweden is unusual in two ways: (a) there is a positive government formation rule (requiring the approval of parliament before the government is appointed), but a very low majority requirement—making it easy to form minority governments; (b) the nomination of a candidate for approval by parliament is made by the speaker, and not by the king, thereby preserving the latter's neutrality.

Table 7.6. Vanuatu: Election of prime minister by parliament

<b>Government formation rules</b>	'The Prime Minister shall be elected by Parliament from among its members by secret ballot. The candidate who obtains the support of an absolute majority of the members of Parliament shall be elected Prime Minister.'
<b>Deadlock-breaking mechanism</b>	'If no candidate is elected [by an absolute majority], a second ballot shall be [held] but the candidate obtaining the lowest number of votes in the first ballot shall be eliminated. If on the second ballot no candidate obtains [an absolute majority], further ballots shall be held, each time eliminating the candidate with the lowest vote in the preceding ballot until one candidate receives the support [of an absolute majority], or if only two candidates remain the support of a simple majority.'
<b>Government removal rules</b>	'The Council of Ministers shall be collectively responsible to Parliament. Parliament may pass a motion of no confidence in the Prime Minister. At least [one] week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected.'
<b>Ministerial appointments</b>	'The Prime Minister shall appoint the other Ministers from among the members of Parliament and may designate one of them as Deputy Prime Minister. Members of Parliament who are appointed Ministers shall retain their membership of Parliament.'
<b>Number of ministers</b>	'The number of Ministers, including the Prime Minister, shall not exceed a quarter of the number of members of Parliament.'
<b>Caretaker provisions</b>	'The Council of Ministers shall cease to hold office whenever the Prime Minister resigns or dies but shall continue to exercise their functions until a new Prime Minister is elected. In the case of the death of the Prime Minister, the Deputy Prime Minister, or if there is no Deputy Prime Minister a Minister appointed by the President of the Republic, shall act as Prime Minister until a new Prime Minister is elected.'
<b>General comments</b>	Vanuatu is an example of a parliamentary system in which parliament formally elects the prime minister in a competitive election. Unusually, however, this election is conducted by a secret ballot, which prevents votes being cast en bloc on the basis of agreed coalitions between parties.

## References



### Where to find constitutions referred to in this Primer

The constitutional texts referred to in this Primer, unless otherwise stated, are drawn from the website of the Constitute Project, <<https://www.constituteproject.org>>.

- Coakley, J. and Gallagher, M., *Politics in the Republic of Ireland*, 5th edn (London: Routledge, 2009)
- Harris, B., *A New Constitution for Australia* (London: Cavendish Publishing, 2002)
- King, A. and Crewe, I., *Blunders of Our Governments* (London: One World Publishing, 2013)
- Palmer, G., and Palmer, M., *Bridled Power: New Zealand's Constitution and Government*, 4th edn (Oxford: Oxford University Press, 2004)
- Riaz, A., 'Shifting Tides in South Asia: Bangladesh's Failed Election', *Journal of Democracy*, 25/2 (2014), pp. 119–30
- Saunders, C., *The Constitution of Australia: A Contextual Analysis* (Oxford: Hart Publishing, 2011)
- Skach, C., *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton, NJ: Princeton University Press, 2010)

Webber, J., *The Constitution of Canada: A Contextual Analysis* (Oxford: Hart Publishing, 2015)

# Annex

---



## About the author

**Elliot Bulmer** is a Programme Officer with International IDEA's Constitution-Building Processes Programme. He holds a PhD from the University of Glasgow and an MA from the University of Edinburgh. He is the editor of International IDEA's Constitution-Building Primer series and specializes in comparative approaches to constitutional and institutional design.

## About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide by providing comparative knowledge, assisting in democratic reform, and influencing policies and politics.

Based in Stockholm, Sweden, it has offices in Africa, the Asia-Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations.

<<http://www.idea.int>>

## About this series

An ongoing series, International IDEA's **Constitution-Building Primers** aim to explain complex constitutional issues in a quick and easy way.

1. What is a Constitution? Principles and Concepts\*
2. Bicameralism<sup>^</sup>
3. Direct Democracy\*
4. Judicial Appointments\*
5. Judicial Tenure, Removal, Immunity and Accountability
6. Non-Executive Presidents in Parliamentary Democracies\*<sup>^</sup>
7. Constitutional Monarchs in Parliamentary Democracies<sup>^</sup>
8. Religion–State Relations<sup>^</sup>
9. Social and Economic Rights<sup>^</sup>
10. Constitutional Amendment Procedures
11. Limitation Clauses<sup>^</sup>
12. Federalism<sup>^\*</sup>
13. Local Democracy<sup>^</sup>
14. Presidential Veto Powers<sup>^</sup>
15. Presidential Legislative Powers
16. Dissolution of Parliament
17. Government Formation and Removal Mechanisms
18. Emergency Powers
19. Fourth-Branch Institutions
20. Constitutional Recognition of Political Parties

<sup>^</sup> Also available in Arabic

\* Also available in Myanmar

Download the Primers from our website: <<http://www.idea.int/publications>>. An updated list of Primers is available at <<http://constitutionnet.org/primers>>.